

**FILED**

**NOV 20 2007**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARIO WINFREY,

Defendant - Appellant.

No. 05-50893

D.C. No. CR-03-01048-RSWL-03

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Ronald S.W. Lew, District Judge, Presiding

Submitted October 22, 2007<sup>\*\*</sup>

Before: B. FLETCHER, WARDLAW, and IKUTA, Circuit Judges.

Mario Winfrey appeals from the 63-month sentence imposed following his plea of guilty to aiding and abetting the distribution of hydrocodone, in violation of 18 U.S.C. § 2 and 21 U.S.C. § 841. We have jurisdiction under 28 U.S.C. § 1291, and we dismiss the appeal.

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Seizing on the provision in his plea agreement that allows him to appeal sentences that are not “constitutional,” Winfrey contends that his sentence violates his due process rights, and is therefore unconstitutional, because it is unreasonable. In general, whether a sentence is unreasonable does not implicate constitutional concerns, for reasonableness is merely the standard of review we apply to criminal sentences. *See United States v. Booker*, 543 U.S. 220, 261 (2005) (holding that the statute allowing for appeals from criminal sentences “impl[ies] a practical standard of review,” namely, “review for ‘unreasonableness’”).

Because Winfrey’s plea was knowing and voluntary, we dismiss the appeal in light of the valid appeal waiver. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000).

**DISMISSED.**